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U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAVID WELLER, Individually and
For Others Similarly Situated.

Plaintiffs,

v.

RCS CORPORATION

Defendant.

Case No.: 4:20-cv-5077

**CLASS AND COLLECTIVE
ACTION COMPLAINT**

JURY TRIAL DEMANDED

Plaintiff David Weller (Weller) is informed and believes, and on that basis alleges, as follows:

SUMMARY

1. RCS Corporation (RCS) failed to pay Weller, and other workers like him, overtime as required by the Fair Labor Standards Act (FLSA) and the Revised Code of Washington, Chapter 49.46 *et seq.* (RCW), Washington's Minimum Wage Act (WMWA), and any relevant regulations and/or rules adopted by the Washington Director of Labor and Industries (collectively, "Washington Wage Laws").

2. Instead, RCS pays Weller, and other workers like him, the same hourly rate for all hours worked, including those in excess of 40 in a workweek.

CLASS AND COLLECTIVE ACTION
COMPLAINT - 1



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1 17. At all relevant times, RCS was an enterprise engaged in commerce or in
2 the production of goods for commerce within the meaning of Section 3(s)(1) of the
3 FLSA, 29 U.S.C. § 203(s)(1), in that said enterprise has and has had employees
4 engaged in commerce or in the production of goods for commerce, or employees
5 handling, selling, or otherwise working on goods or materials that have been moved
6 in or produced for commerce - such as computers, automobiles, and cell phones –
7 because RCS is a staffing firm providing services to the energy, engineering, and
8 utility industries throughout this country.
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12 18. At all relevant times, RCS had an annual gross volume of sales made in
13 excess of \$500,000.00.
14

15 19. At all times hereinafter mentioned, Weller and the Putative Class
16 Members were engaged in commerce or in the production of goods for commerce
17 per 29 U.S.C. §§ 206-207.
18

19 THE FACTS

20 20. RCS is a nationwide staffing firm that provides services to the energy,
21 engineering, and utility sectors.
22

23 21. In order to provide these services, it employs individuals like Weller.

24 22. Weller was an hourly employee of RCS.

25 23. Weller was hired around August of 2016.

26
27 24. Weller was a Maintenance Outage Coordinator and a Senior Scheduler
28 for RCS.

1 25. RCS paid Weller by the hour.

2 26. RCS paid Weller \$100 per hour.

3 27. Weller reports the hours he works to RCS on a regular basis.

4 28. If Weller worked fewer than 40 hours in a week, he was only paid only
5
6 for the hours he worked.

7 29. But Weller regularly worked more than 40 hours in a week.

8 30. Weller would sometimes work up to 72 hours in a week.

9 31. The hours Weller worked are reflected in RCS's records.

10 32. RCS paid Weller at the same hourly rate for all hours worked, including
11
12 those in excess of 40 in a workweek.

13
14 33. Rather than receiving time and half as required by the FLSA, Weller and
15
16 the Putative Class Members only received "straight time" pay for overtime hours
17 worked.

18 34. This "straight time for overtime" payment scheme violates the FLSA
19
20 and the Washington Wage Laws.

21 35. Weller and the Putative Class Members were not paid for periods of
22
23 inactivity during meal breaks and rest breaks.

24 36. RCS has not paid Weller and the Putative Class Members the overtime
25
26 they are owed, constituting waiting time.

27 37. RCS was aware of the overtime requirements of the FLSA and
28 Washington Wage Laws.

1 38. RCS nonetheless failed to pay certain hourly employees, such as Weller,
2 overtime.

3
4 39. RCS did not pay Weller and the Putative Class Members on a salary
5 basis.

6 40. RCS's failure to pay overtime to these hourly workers was, and is, a
7 willful violation of the FLSA and the Washington Wage Laws.
8

9 **FLSA VIOLATIONS**

10 41. By failing to pay Weller and the FLSA Class Members overtime at one-
11 and-one-half times their regular rates, RCS violated the FLSA's overtime provisions.
12

13 42. RCS owes Weller and the FLSA Class Members the difference between
14 the rate actually paid and the proper overtime rate.
15

16 43. Any differences in job duties do not detract from the fact that these
17 hourly workers are entitled to overtime pay.
18

19 44. Because RCS knew, or showed reckless disregard for whether, its pay
20 practices violated the FLSA, RCS owes these wages for at least the past three years.

21 45. RCS is liable to Weller and the FLSA Class Members an amount equal
22 to all unpaid overtime wages as liquidated damages.
23

24 46. Weller and the FLSA Class Members are entitled to recover all
25 reasonable attorneys' fees and costs incurred in this action.
26
27
28

1 47. The workers impacted by RCS's "straight time for overtime" scheme
2 should be notified of this action and given the chance to join pursuant to 29 U.S.C. §
3 216(b).
4

5 **WASHINGTON WAGE LAW VIOLATIONS**

6 48. Weller realleges and reincorporates all allegations above as if
7 incorporated herein.
8

9 49. The foregoing conduct, as alleged, violate the Washington Wage Laws.

10 50. At all relevant times, RCS has been, and continue to be, an "employer"
11 within the meaning of the Washington Wage Laws. At all relevant times, RCS
12 employed "employee[s]," including Weller and the Washington Class, within the
13 meaning of the Washington Wage Laws.
14
15

16 51. RCW §49.52.070 provides that employers who violate Washington's
17 minimum wage laws under the circumstances present in this case are liable for double
18 the amount of wages improperly withheld.
19

20 52. Pursuant to RCW §49.52.080, there exists a presumption of willfulness.

21 53. The Washington Wage Laws require an employer, such as RCS to pay
22 overtime compensation to all non-exempt employees. Weller and the Washington
23 Class are not exempt from overtime pay requirements under the Washington Wage
24 Laws.
25
26

27 54. More specifically, the Washington Class members' claims are subject to
28 the three-year statute of limitations applicable to the WMWA and implied contracts,

1 as provided under RCW § 4.16.080(3). *See e.g., Seattle Prof'l Eng'g Employees Ass'n v.*
2 *Boeing Co.*, 139 Wash. 2d 824, 838, 991 P.2d 1126, 1134, opinion corrected on denial
3 of reconsideration, 1 P.3d 578 (Wash. 2000); *Mitchell v. PEMCO Mut. Ins. Co.*, 134
4 Wash. App. 723, 737, 142 P.3d 623 (2006).

5
6 55. At all relevant times, RCS had a policy and practice of failing and
7 refusing to pay overtime pay to Weller for his hours worked in excess of forty hours
8 per workweek.

9
10 56. RCS violated Washington Wage Laws including, but not necessarily
11 limited to, RCW, WMWA, by failing to pay the Washington Class on a salary basis.

12
13 57. At all relevant times, RCS did not pay the Washington Class on a salary
14 basis, so the Washington Class was not exempt under Wash. Admin. Code §296-128-
15 510 (executive), Wash. Admin. Code §296-128-520 (administrative), Wash. Admin.
16 Code §296-128-530 (professional), and Wash. Admin. Code §296-128-532 (salary
17 basis and deductions).

18
19
20 58. With regards to the Washington Class Members, RCS did not comply
21 with Washington Admin. Code §296-126-092(4) which provides: “Employees shall
22 be allowed a rest period of not less than ten minutes, on the employer’s time, for
23 each four hours of working time.”

24
25 59. At all relevant times, RCS willfully failed and refused, and continues to
26 willfully fail and refuse, to pay Weller and the Washington Class Members the
27 amounts owed. Specifically, RCS claws back all hourly advances not paid for
28

1 rest/meal break time. This conduct violates Washington Wage Laws as alleged in this
2 cause of action.

3
4 60. RCS has denied Weller and the Washington Class wages and benefits of
5 employment, including contractual vacation pay, as alleged herein. RCS's deduction
6 of Weller and the Washington Class members vacation pay for wages results in
7 depriving Weller and Washington Class members of their vacation pay, in violation
8 of RCW §49.52.050. RCS is, therefore, liable to Weller and the Washington Class for
9 all such vacation pay and other improperly deducted or rebated wages or earnings,
10 and double damages, under RCW §49.52.070.

11
12
13 61. Weller and the Washington Class seek recovery of attorneys' fees, costs,
14 and expenses of this action to be paid by RCS.

15
16 62. Weller and the Washington Class seek damages in the amount of the
17 respective unpaid wages earned and due at the regular hourly wage rate, and at a rate
18 not less than one and one-half times the regular rate of pay for work performed in
19 excess of forty hours in a workweek; actual damages; penalty damages; and such
20 other legal and equitable relief as the Court deems just and proper.

21
22
23 **CLASS AND COLLECTIVE ACTION ALLEGATIONS**

24 63. RCS's illegal "straight time for overtime" policy extends beyond Weller.

25 64. It is the "straight time for overtime" payment plan that violates the
26 FLSA and Washington Wage Laws in this collective and class action.
27
28

1 65. RCS pays numerous of hourly employees according to the same
2 unlawful scheme.

3
4 66. Any differences in job duties do not detract from the fact that these
5 hourly workers were entitled to overtime pay.

6 67. Weller and the Class Members impacted by RCS's "straight time for
7 overtime" scheme should be notified of this action and given the chance to join
8 pursuant to 29 U.S.C. § 216(b).

9
10 68. RCS has accurate records of the wages paid to its hourly workers.

11
12 69. The Class Members are geographically disbursed, residing, and working
13 in states across the country.

14 70. Weller's experiences are typical of the experiences of all Class Members.

15
16 71. Weller has no interests contrary to, or in conflict with, the members of
17 the Class Members. Like each member of the proposed classes, Weller has an interest
18 in obtaining the unpaid overtime wages owed under state and/or federal law.

19
20 72. A class and collective action, such as the instant one, is superior to
21 other available means for fair and efficient adjudication of the lawsuit.

22
23 73. Absent this action, many members of the FLSA Class and Washington
24 Class likely will not obtain redress of their injuries and RCS will retain the proceeds
25 of their violations of the FLSA and Washington Wage Laws.

26
27 74. Furthermore, individual litigation would be unduly burdensome to the
28 judicial system. Concentrating the litigation in one forum will promote judicial

1 economy and parity among the claims of individual members of the classes and
2 provide for judicial consistency.

3
4 75. The questions of law and facts common to each of the FLSA and
5 Washington Class Members predominate over any questions affecting solely the
6 individual members. Among the common questions of law and fact are:

- 7
8 a. Whether RCS employed the FLSA and Washington Class
9 Members within the meaning of the FLSA and Washington
10 Wage Laws;
11
12 b. Whether the FLSA and Washington Class Members were exempt
13 from overtime;
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15 c. Whether RCS's straight time for overtime compensation practice
16 met the salary basis test;
17
18 d. Whether RCS's decision not to pay overtime to the FLSA and
19 Washington Class Members was made in good faith; and
20
21 e. Whether RCS's violation of the FLSA and Washington Wage
22 Laws was willful.

23 76. Weller's claims are typical of the FLSA and Washington Class Members
24 since both have sustained damages arising out of RCS's illegal and uniform
25 employment pay policy.
26
27
28

- 1 c. Judgment against RCS awarding Weller and the Class Members
2 all unpaid overtime compensation, liquidated damages, attorneys'
3 fees and costs.
4
5 d. An award of pre- and post-judgment interest on all amounts
6 awarded at the highest rate allowable by law; and
7
8 e. All such other and further relief to which Weller and the Class
9 Members may show themselves to be justly entitled.

10 Respectfully submitted,

11
12 By: /s/ Nicholas D. Kovarik

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